

Claims Management Final Internal Audit Report

May 2023

Swansea Bay University Health Board



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Acknowledgement

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Executive Summary

Purpose

To review the arrangements in place to assess and provide assurance regarding the claims management process at the health board.


Overview

We have issued **reasonable** assurance on this area.

The matters requiring management attention include:

- Updating policies and procedures;
- Timeliness for dealing with claims; and
- Identifying themes and trends, and enhanced monitoring of ongoing claim caseloads and compliance.

Report Classification

Reasonable Few matters require attention and are compliance or advisory in nature.
 **Low impact** on residual risk exposure.

Trend

N/A

Assurance summary¹

Assurance objectives	Assurance
1 Policies and Procedures	Reasonable
2 Levels of authority and appropriate investigation	Substantial
3 Timeliness of actions taken	Reasonable
4 Claims Database	Reasonable
5 Analysis of claims	Limited
6 Performance monitoring	Reasonable

Key matters arising

	Assurance Objectives	Control Design or Operation	Recommendation Priority
1 Redress Procedures	1	Design	Medium
2 Review of Claims Management Policy and SOPs	1,2	Operation	Medium
3 Actions taken for Redress Cases	2,3	Operation	Medium
4 Analysis of themes and trends	5	Operation Design	Medium
5 Monitoring of ongoing caseload and compliance performance	6	Design	Medium

¹ The objectives and associated assurance ratings are not necessarily given equal weighting when formulating the overall audit opinion.

1. Introduction

- 1.1 Swansea Bay University Health Board (the 'health board') has a legal duty of care towards members of the general public and its staff. People who consider they have suffered harm from a breach of this duty can make a claim for compensation and damages against the health board.
- 1.2 Section 8 of the Welsh Government's '*Guidance on Dealing with Concerns about the NHS from 1 April 2011*', allows Responsible Bodies to manage and settle concerns for financial compensation in relation to all episodes of clinical negligence and personal injury, up to the sum of £1 million. Beyond this limit settlement requires approval from the Welsh Government. This authority is given subject to certain conditions, including the requirement that each trust/health authority has a clear policy, approved by the Board, on the handling of clinical negligence and personal injury claims. The Guidance supports and supplements the *National Health Services (Concerns, Complaints and Redress Arrangements) (Wales), Regulations*. (Please note that all references to regulation numbers relate to the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011).
- 1.3 The process for dealing with claims received by the health board is set out within its Claims Management Policy. The health board aims to deal with all compensation claims made against it proactively, in an equitable, efficient and timely manner. The health board will use legal advisors in the defence or settlement of clinical negligence and personal injury claims. Small to moderate value claims of moderate complexity may be managed in-house by the health board's Claims Managers under the Redress Regulations.
- 1.4 The risks considered during the review were as follows:
- Claims not managed appropriately which could result in harm to patients and staff, reputational damage and financial loss to the health board; and
 - Lessons are not learned as claims are not adequately captured.
- 1.5 The following table summarises the numbers of claims / cases tested during the audit, the details of which are considered at each of the audit objectives:

Cases / claims tested	Values	Number of cases / claims tested
<i>Redress</i>	<i>Under £25k</i>	<i>10</i>
<i>Personal Injury</i>	<i>Over £25k</i>	<i>5</i>
<i>Clinical Negligence</i>	<i>Over £25k</i>	<i>5</i>

2. Detailed Audit Findings

2.1 The table below summarises the recommendations raised by priority rating:

	Recommendation Priority			Total
	High	Medium	Low	
Control Design	-	3	-	3
Operating Effectiveness	-	2	-	2
Total	-	5	-	5

2.2 Our detailed audit findings are set out below. All matters arising and the related recommendations and management actions are detailed in Appendix A.

Audit objective 1: Documented procedures for handling claims are in place.

2.3 The health board is required to adhere to the following in respect of claims / cases received:

1. Redress: NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011;
2. Redress: Welsh Government’s Putting Things Right Guidance on Dealing with Concerns about the NHS;
3. Clinical Negligence and Personal Injury: Pre-Action Protocol for the Resolution of Clinical Disputes; and
4. Clinical Negligence and Personal Injury: Civil Procedure Rules.

2.4 The health board has a redress flowchart in place that supplements the above guidance. The flowchart is in date and outlines the process to be followed. However, it does not include levels of authority. This detail is included in the Miscellaneous Payment Request Form (MPRF) process document; however, for completeness of process, it is recommended that it is also included in the flowchart. Further, the flowchart does not state the deadlines within which the health board is required to offer redress. **See MA1.**

2.5 A Claims Management Policy, a Clinical Negligence Standard Operating Procedure (SOP), and a Personal Injury SOP were all in place for the management of claims at the health board, and were appropriately aligned to the relevant regulations/rules /protocols (as per para 2.3).

2.6 At the date of audit, we were advised that the draft SOP for Redress, was scheduled to be finalised once the Welsh Risk Pool changes were finalised and agreed. **See MA1.**

2.7 The Policy and SOPs identify action to be taken on receipt of a new claim, the process for instructing solicitors (where appropriate) and the general procedure

for handling claims. This includes the following actions to investigate circumstances giving rise to the claim:

- establish account of original incident;
- identify and maintain all records relating to incident;
- obtain statements from staff involved in incident;
- gather and collate all relevant info and/or evidence; and
- obtain in house or external expert review.

The health board use NWSSP Legal & Risk as legal advisors in the defence or settlement of clinical negligence and personal injury claims. The health board remains ultimately accountable for those claims raised against it and we acknowledge that the claims team also has a duty to provide information required to NWSSP Legal & Risk.

- 2.8 The health board's Standing Financial Instructions / Standing Orders / Scheme of Delegation do not include a reference to delegated limits in respect of claims. Rather, the Standing Orders state that *'the Director of Finance should ensure systems are in place for the authorisation of all accounts and claims (10.2.1)'*; and this is addressed through the Policy and SOPs in place. Our review noted an anomaly between the delegated limits for the Chief Executive/Deputy Chairman outlined at the Claims Management Policy (<£750k) and that at the Clinical Negligence Claims and Personal Injury Claims SOPs (£250k - £499k) (**MA2**). However, no issues were identified during our testing as none of our sample was of a value to require this level of authorisation.
- 2.9 In addition, we noted that the Claims Management Policy requires updating to reflect current governance arrangements. Section 14.3 of the Policy states that *'The Quality and Safety Governance Group (QSGG) will be the appropriate forum for the lead members of staff for concerns, incidents, risk and claims to meet on a regular basis to ensure the identification of any trends and remedial action that may be required'*. However, details of claims and incidents are reported to the Patient Safety and Compliance Group. **See MA2.**

Conclusion:

- 2.10 All-Wales guidance is available for the management of claims and there are health board specific policies and SOPs in place. However, a review of the health board documents is required to provide clarity on timelines, address inconsistencies as well as reflect the current governance structure. The Redress SOP also requires finalising as a matter of priority. Noting this, we have assigned the objective **reasonable** assurance.

Audit objective 2: The relevant level of authority has been sought for each claim, which is subject to the appropriate level of investigation, based on the severity and complexity of each case.

- 2.11 The clinical negligence and personal injury SOPs and Claims Management Policy outline the levels of authority required for each claim. We were informed by

management that compensation would not be granted unless the requirements of authority had been addressed; and such is reviewed by experienced Claims Managers, within the health board's Legal Services team.

- 2.12 As detailed in para 1.5, we tested a sample of cases and claims to confirm that appropriate authority in respect of (1) confirmation of breach of duty, (2) authority to make a financial offer and (3) authority to settle the claim had been obtained.
- 2.13 Information supporting claims and cases is saved on both Datix Web and Datix Cymru – the latter used for cases from April 2022 onwards. For our sample, we noted a high volume of information relevant to each claim / case included in both systems, which made it difficult to follow the audit trail to support the dates recorded / stage of the claim reported. However, with support from the respective Claims Managers, we were able to confirm the audit trail to support the relevant level of authority. Refer to **Appendices B, C & D** for full details of testing.

Conclusion:

- 2.14 For those cases / claims sampled at this review, appropriate evidence was available to confirm that the relevant level of authority had been sought; and appropriate action had been taking in investigating and pursuing each claim/case. Accordingly, we assign this objective **substantial** assurance.

Audit objective 3: Appropriate action is taken for each claim, in a timely manner.

Redress Cases

- 2.15 Once the health board undertakes the investigation of a concern and determines that a qualifying liability exists, or may exist under Regulation 26, it is required to determine whether an offer of Redress should be made (for cases that justify financial compensation up to £25,000). The following issues were identified from our testing (also refer to Appendix B):
- Expectation that responses were sent to the complainants within 30 working days: the current audit trail on Datix does not identify this information. We recognise that this element of the process is prior to the incident being referred to the claims team for escalation to redress, (noting that these cases can begin as complaints/incidents and therefore outside the remit of the claims team). However, for completeness, it would be useful to evidence compliance. **See MA3.**
 - Completion of a final response once a qualifying liability has been determined: reports by the relevant Service Groups were evidenced for eight of the ten cases sampled. For the remaining two, due to the nature / current stage of the case, a response was not needed.
 - Provision of advice within 5 working days of allocation: the audit trail evidenced this had been provided to the relevant Service Group for eight of the ten cases sampled. For the remaining cases, the deadline for provision

had not been achieved for one, and was not applicable for the other. We recognise that this deadline was an internal deadline for the Claims team (as per the redress flowchart) rather than a regulatory requirement.

- 2.16 As per Regulation 33, once it has been established that a qualifying liability in tort exists, and therefore an offer of redress may be made, this must be done within 12 months of first receipt of the concern. For four of the cases reviewed, an offer within this timeframe was not achieved and for two of the cases this timeframe was not applicable. **See MA3**. Refer to **Appendix B** for full details of testing.
- 2.17 Management advised that this does not tend to be achieved in practice, both within the health board and across NHS Wales. As has been evidenced through testing, and through discussion with claims officers, all cases are managed proactively to achieve a conclusion in the most appropriate timescale. Management also advised that discussions are ongoing with NWSSP Legal & Risk regarding the reasonableness of this timeline; and the potential to update the 2011 Regulations to reflect current practice.

Clinical Negligence Claims and Personal Injury Claims

- 2.18 For the sample of these claims, we sought to determine whether they had been raised within the required timescales, when the case had been referred to NWSSP Legal and Risk Services (in accordance with the health board's SOPs, due to their complexity), and whether the Learning from Events Report had been submitted within 60 days of admission, as per the requirements of the Welsh Risk Pool reimbursement procedures. For all claims sampled, the required timescales had been met. Refer to **Appendices C & D** for full details of testing.

Conclusion:

- 2.19 Appropriate evidence was available to demonstrate that, where applicable, actions for the cases / claims sampled had been progressed in a timely manner. However, for completeness, information relating to incidents / complaints addressed within the 30-day timeframe, whilst preceding the involvement of the Claims Team, should be maintained on Datix. Where it was noted that offers of redress had not been made in accordance with the Putting Things Right timescales, ongoing communication with Legal and Risk was evident. Noting this, **reasonable** assurance has been assessed in this area.

Audit objective 4: An adequate claims database has been established to capture and monitor claims (including evidence, invoices, approvals etc.).

- 2.20 Implementation of the Datix Cymru database, replacing Datix Web, was completed in 2022, and manages all the information relating to claims, including the date of incident, date of referral to NWSSP Legal & Risk Services and supporting documents.

- 2.21 We note that due to the significant volume of information held on 'live' cases, the health board has maintained data across both Datix systems rather than transferred to the new system for 'live' cases.
- 2.22 Access to the database is only via a formal approval route restricted to approved individuals. The database is only accessible to the health board's claims team, all of whom have received appropriate training on the database, for the management and monitoring of redress cases and claims.
- 2.23 As noted under audit objective 6, there is a lack of evidence of monitoring of ongoing claims. Reports should be generated regularly from Datix to ensure records are complete, accurate and up to date, that claims are categorised consistently, and to review the status of each claim and the actions needed to progress in a timely manner and to comply with requirements (see **MA4**).

Conclusion:

- 2.24 An adequate claims database is in place to which access is restricted to approved individuals. However, given the lack of formal analysis of claims/cases (audit objective 5) and monitoring of claims (audit objective 6), we note that Datix is the key denominator for both. Noting this, we have assessed **reasonable** assurance in this area.

Audit objective 5: Claims are analysed to identify any trends or emerging patterns.

- 2.25 Section 14.2 of the health board's Claims Management Policy states that *'The primary means of ensuring practical linkages between incidents, concerns and claims will be via interrogating the HB's Datix modules...'*
- 2.26 We noted that the Claims Team meets with the Service Groups on an informal, but regular, basis. Ongoing cases / claims, learning, risk cases, emerging trends / patterns to highlight the new trigger cases, outstanding learning and deferred cases are discussed to ensure that appropriate action is taken to address weaknesses and failures to prevent recurrence. An update on the monthly position of the learning and assurance plans, required for the forthcoming month, along with those that remain outstanding, is also provided. However, there is no formal output of this information.
- 2.27 We acknowledge that there is an action for the Claims team, from the Patient Safety Compliance Group, *'to utilise Datix system and undertake thematic review of claims received to determine whether there are any trends that need addressing/urgent action to be taken'*. At the date of fieldwork, we were advised that the report is evolving and will be developed to capture themes. See **MA4**
- 2.28 Review of the December Quality and Safety Committee papers noted the presentation of a Legal Services report, which included the following in respect of clinical negligence claims (for the period July to September 2022):
- Opened cases by Service Delivery Unit;
 - Opened cases by Speciality;

- Top Trends by Incident Type; and
- Top Trends by Speciality.

2.29 Whilst we recognise that this quarterly report has recently been developed and will mature as it becomes embedded over time, we consider it would be beneficial for future reports to include cumulative figures to allow meaningful analysis of trends and ongoing claims. Also, whilst narrative was included for personal injury claims and redress cases, it was not to the same level of detail as the clinical negligence cases. See **MA4**.

2.30 The Welsh Risk Pool require assurances that opportunities for learning from incidents/risks are demonstrated where cases are settled without admissions; else the cases will be deferred until evidenced. We noted from review of the compliance reports (see **audit objective 6**) that there is a requirement for assurance checks to be in place within the Service Groups to ensure this requirement is met. The report to December’s Quality and Safety Committee stated that ‘*reduced backlog of outstanding Learning from Events Reports (LFERs) and recently submitted cases mean no cases currently at risk of permanent deferral*’.

2.31 The January 2023 compliance report to the Patient Safety Compliance Group presented the following data in respect of outstanding / deferred learning by delivery unit:

	Claims – Learning Outstanding	Claims – Learning Deferred
Morrison Delivery Unit	9	8
Singleton/NPT Delivery Unit	6	14
Mental Health & Learning Disabilities Delivery Unit	0	1
Primary Care & Community Services Delivery Unit	1	2
Operations	2	1
Princess of Wales	0	4
TOTAL	18	30

2.32 Whilst there are a significant amount of outstanding and deferred learning reports, we recognise that the Claims Team / Legal Services are fulfilling their obligations by sending regular updates to the Service Groups and reminding them of their obligations to complete the reports for submission to the Welsh Risk Pool. The Welsh Risk Pool could issue a financial penalty to the health board if a deadline is missed or if they are not satisfied / assured by the learning. It is noted this this has yet to occur. See **MA5**

Conclusion:

2.33 The reporting of themes and trends of claims is still evolving. Whilst the Claims Team holds regular discussions with the Service Groups, and monthly compliance reports detail total claims by Service Group for the month, there is no formal

report prepared therefore limiting the health board's ability to identify themes and trends that require addressing / urgent action. There is also a significant amount of outstanding and deferred learning reports, the content of which would further enhance the potential for trend analysis. We note that some of this detail has been included in the recently developed report to the Quality and Safety Committee, although it is currently limited to clinical negligence claims only. Whilst noting the reporting developments to date, **limited** assurance has been assessed in this area reflecting the need to demonstrate an embedded process for claims analysis at the health board.

Audit objective 6: Performance monitoring is undertaken on a regular basis and appropriate assurances reported.

- 2.34 As per para 2.26, the claims team provide each Service Group with a monthly position of the learning and assurance plans required for the forthcoming month, along with those that remain outstanding.
- 2.35 A compliance report is also prepared by the Claims Team. This is presented at the monthly Patient Safety Compliance Group, which reports to the Quality and Safety Committee, and includes information on:
- Welsh Risk Pool Learning Deadlines;
 - Personal Injury Claims;
 - Claim Negligence Claims;
 - Inquests (not included in the audit scope); and
 - Redress.
- 2.36 It was noted, however, that the report's focus is limited to the volumes of clinical negligence and personal injury claims, and there was no graphical reporting of redress cases. We consider that this would be useful to demonstrate any trends noting that the additional time period permitted, during Covid, for the submission of learning has now ceased. **See MA5.**
- 2.37 As per para 2.28, a Legal Services report has recently been developed and will be presented to Quality and Safety Committee on a quarterly basis. However, review of the reports developed has identified a lack of monitoring of the ongoing claims caseload, including the status of each claim and the actions needed to progress in a timely manner and compliance with the various requirements highlighted within this report (see **MA4**).

Conclusion:

- 2.38 A monthly compliance report is produced for the monitoring of claims and redress cases at the health board. The Legal Services Team has also recently introduced a quarterly report which is presented to the Quality and Safety Committee. A number of enhancements are required to the scope of information reported to ensure effective performance monitoring and provide appropriate assurance.

However, recognising the monitoring developments to date, we have assessed **reasonable** assurance in this area.

Appendix A: Management Action Plan

Matter arising 1: Redress Procedures (Design)

Impact

There are All Wales Regulations and guidance documents to be followed by the health board for redress. In addition, the health board has a redress flowchart internally that outlines the process to be followed. The flowchart is in date and outlines the process to be followed. However, the flowchart does not include levels of authority or details of deadlines within which the health board is required to offer redress.

Potential risk of:

- Claims not being managed appropriately and in a consistent manner

It is noted that the MPRF process includes timelines, the detail of which could be included in the Redress SOP.

At the date of fieldwork, the SOP for Redress process had yet to be finalised. Review of the draft document noted inclusion of the following:

- The process for dealing with a redress case once received from the Service Group / Unit, including:
 - Allocating a redress handler;
 - Consideration of quantum (e.g., is it likely to be more than £25k and therefore should it be a Regulation 24 response);
 - Consider is the response a regulation 24, 26 or 33 (checklists are attached to the draft SOP).
 - Draft BOD (Breach of Duty) memo;
- Confirmation that a Breach of Duty has occurred;
- Investigating Causation;
- Sending final responses where a qualifying liability is confirmed;
- Quantum authorities;
- Learning from Events Report;
- Offer accepted – Submission to Welsh Risk Pool for final reimbursement
- File closure; and
- Forecasting

We considered that the draft document was sufficient based on the requirements of the Putting Things Right Policy. We were advised that this procedure will be finalised upon agreement of the Welsh Risk Pool changes included therein.

Recommendations

Priority

- 1.1 The Redress Handler SOP (Standard Operating Procedure) should be finalised and endorsed by an appropriate forum.

Medium

Management response	Target Date	Responsible Officer
1.1 Redress SOP review in process and due to be complete by June 2023. This is an internal SOP which does not require forum approval but will be approved by management.	30 June 2023	Assistant Head of Legal Services and Legal Services Manager

Matter arising 2: Review of Claims Management Policy and SOPs (Operation)

Impact

A Claims Management Policy, a Clinical Negligence Standard Operating Procedure (SOP), and a Personal Injury SOP are all in place for the management of claims at the health board. They set out the actions to be taken on receipt of new claim, the process for instructing solicitors (where appropriate) and the general procedure for handling claims.

This includes the following actions to investigate circumstances giving rise to the claim:

- establish account of original incident;
- identify and maintain all records relating to incident;
- obtain statements from staff involved in incident;
- gather and collate all relevant info and/or evidence; and
- obtain in house or external expert review.

The health board use NWSSP Legal & Risk as legal advisors in the defence or settlement of clinical negligence and personal injury claims. The health board remains ultimately accountable for those claims raised against it and we acknowledge that the claims team also has a duty to provide information required to NWSSP Legal & Risk.

There is an anomaly between the delegated limits outlined at the Claims Management Policy when compared to the delegated limits for the Chief Executive at the SOP. The delegated limits within the Claims Management Policy for the Chief Executive/Deputy Chairman are noted as less than £750k. The Clinical Negligence Claims and Personal Injury Claims SOPs states the delegated limit for the Chief Executive as £250,000 - £499,999. However, we found no issues from the testing of our sampled cases.

In addition, we noted that the Claims Management Policy requires updating to reflect current governance arrangements. Section 14.3 of the Policy states that *'The Quality and Safety Governance Group (QSGG) will be the appropriate forum for the lead members of staff for concerns, incidents, risk and claims to meet on a regular basis to ensure the identification of any trends and remedial action that may be required'*. However, claims and incidents now go to Patient Safety and Compliance Group.

Potential risk of:

- Claims not being managed appropriately and in a consistent manner.

Recommendations		Priority	
2.1	The Claims Team should consider a review of its policies and procedures relating to personal injury and clinical negligence claims to ensure accuracy and consistency, with particular focus on delegated limits and expected timelines relating to the provision of information to legal advisors engaged by the health board.	Medium	
2.2	A further review of the Claims Management Policy should be undertaken to reflect the current governance structure within the health board.		
Management response		Target Date	Responsible Officer
2.1	A review will be undertaken and of the policies and procedures in place and changes will be approved by the Director of Corporate Governance	31 August 2023	Assistant Head of Legal Services
2.2	The action in 2.1 will include updating the Governance Structure within the Health Board.	31 August 2023	Assistant Head of Legal Services

Matter arising 3: Actions taken for Redress Cases (Operation)	Impact
<p>Once the Health Board undertakes the investigation of a concern and determines that a qualifying liability exists, or may exist under Regulation 26, it is required to determine whether an offer of Redress should be made (for cases that justify financial compensation up to £25,000).</p> <p>We tested ten redress cases to determine whether responses were sent to complainants within 30 days, whether an interim report had been completed on admission of a qualifying liability and provision of advice within five days (which is an internal deadline rather than a regulatory requirement).</p> <p>Our audit found that evidence to support the 30-day response timeline was not clear on Datix. Management confirmed that this stage precedes the Claims Team involvement in the case; however, there is the ability to record when the response is issued within the 'stages' functionality in Datix which would allow for a more complete record, but that the Claims Team would not monitor such updates. It was also noted that within the 'Putting Things Right' guidance, the 30-days can be extended to 6 months, if required. See Appendix B for full details of testing.</p> <p>With regard to the provision of advice within 5 working days of allocation, this had been provided to the relevant Service Group for eight of the ten cases sampled. For the remaining two cases, the deadline for provision had not been achieved for one; and was not applicable for the other.</p> <p>As per Regulation 33, once it has been established that a qualifying liability in tort exists, and therefore an offer of redress may be made, this must be done within 12 months of first receipt of the concern:</p> <ul style="list-style-type: none"> • For four of the cases reviewed, an offer within this timeframe was not achieved; and • For two cases, this was not applicable noting that one case was ongoing at the date of fieldwork so an offer of redress had yet to be concluded and the other case was a TAVI case that had not been initiated by a claimant. Please refer to Appendix B for further details. <p>We accept that there are issues with compliance with Regulation 33 pan NHS Wales and not unique to the health board. It is recommended that these issues are reported to the All-Wales meetings (WRP Redress Network) for consideration.</p>	<p>Potential risk of:</p> <ul style="list-style-type: none"> • Claims not being managed appropriately and in a timely manner; and • Non-compliance with the Regulations which may lead to penalties incurred by the health board.
Recommendations	Priority
<p>3.1 Evidence recording when the service group / unit response goes out to the complainant should be recorded in stages, which would allow for a more complete record for each case.</p>	<p>Medium</p>

- 3.2 Where an investigation exceeds 12 months, a standard approach should be adopted to document the reason for the delay on the Datix file.
- 3.3 The issues with the requirement to offer redress within 12 months, in accordance with 'Putting Things Right' should be raised at the All Wales (WRP Redress Network) meetings.

Management response	Target Date	Responsible Officer
3.1 Noted and discussed with Redress Team, and will be incorporated into Redress Team Audit which is due to commence August 2023	August 2023	Legal Services Managers
3.2 Noted and discussed with Redress Team, and will be incorporated into Redress Team Audit which is due to commence August 2023	August 2023	Legal Services Managers
3.3 Noted and has been brought to the attention of the WRP Redress Network. Aware that Putting Things Right Regulations are under review.	Completed	Legal Services Managers

Matter arising 4: Analysis of themes and trends (Design)

Impact

Section 14.2 of the health board's Claims Management Policy states that '*The primary means of ensuring practice linkages between incidents, concerns and claims will be via interrogating the HB's Datix module...*'.

We noted that the Claims Team meets regularly with the Service Groups on an informal, but regular, basis. Ongoing cases / claims, learning, risk cases, emerging trends / patterns to highlight the new trigger cases, outstanding learning and deferred cases are discussed to ensure that appropriate action is taken to address weaknesses and failures to prevent recurrence. An update on the monthly position of the learning and assurance plans, required for the forthcoming month, along with those that remain outstanding, is also provided by Claims to the service groups. However, there is no formal output of this information to the health board.

We acknowledge that there is an action for the Claims team, from the Patient Safety Compliance Group, '*to utilise Datix system and undertake thematic review of claims received to determine whether there are any trends that need addressing/urgent action to be taken*'. We were advised that the report is evolving and will be developed further to capture themes.

The last report to the Patient Safety Compliance Group (January 2023) highlighted a number of claims with outstanding and deferred learning reports.

Review of the December Quality and Safety Committee papers noted the presentation of a Legal Services report, which included the following in respect of clinical negligence claims (for the period July to September 2022):

- Opened cases by Service Delivery Unit;
- Opened cases by Speciality;
- Top Trends by Incident Type; and
- Top Trends by Speciality.

It was noted that the same detail of reporting was not included for personal injury claims or redress claims.

Whilst we recognise that the quarterly report to the Quality and Safety Committee has recently been developed and will mature as it becomes embedded over time, we consider it would be beneficial for future reports to include cumulative figures allow meaningful analysis of trends and ongoing claims. Also, whilst narrative was included for personal injury claims and redress cases, it was not to the same level of detail as the clinical negligence cases.

Additionally, there are a significant amount of outstanding and deferred learning reports. We recognise that the Claims Team / Legal Services are fulfilling their obligations by sending regular updates to the Service Groups and reminding them of their obligations to complete the reports for submission to the Welsh Risk Pool. The Welsh Risk Pool could issue

Potential risk of:

- Lessons are not learned as claims are not adequately captured and themes / trends are not reported effectively; which could result in harm to patients and staff, reputational damage and financial loss to the organisation.

a financial penalty to the health board if a deadline is missed or if they are not satisfied / assured by the learning. It is noted this this has yet to occur.

Recommendations	Priority
<p>4.1 Formal output of the emerging trends and themes from Service Group areas should be reported and shared at the monthly Service Group meetings.</p> <p>4.2 In using the output from 4.1, the quarterly reports prepared by the Legal Services team should:</p> <ul style="list-style-type: none"> a) be enhanced to include trends / themes for both personal injury claims and redress cases; and b) include cumulative figures for all claims / cases to further enhance analysis of themes and trends and to capture learning. <p>4.3 Learning reports should be submitted to the Welsh Risk Pool in accordance with the deadlines stipulated.</p>	<p>Medium</p>

Management response	Target Date	Responsible Officer
<p>4.1 Formal outputs are recorded through the Patient Compliance Group Report and shared with Services Groups on a monthly basis.</p>	<p>Complete and ongoing</p>	<p>Head of Legal Services, Risk and Patient Experience</p>
<p>4.2 Quarterly Report to the Quality and Safety Committee is a new report that has been amended to reflect the findings of this report to capture analysis of themes, trends and learning.</p>	<p>Complete and ongoing</p>	<p>Assistant Head of Legal Services</p>
<p>4.3 Monthly reports will be issued to the Service Groups setting out requirements/deadlines to submit learning reports to WRP and will be included within the monthly Patient Experience Report for the Quality and Safety Group.</p>	<p>June 2023</p>	<p>Assistant Head of Legal Services and Head of Legal Services, Risk and Patient Experience</p>

Matter arising 5: Monitoring of ongoing caseload and compliance performance (Design)

Impact

A compliance report providing a summary on new claims and any outstanding learning is prepared by the Claims Team and presented at the monthly Patient Safety Compliance Group. It includes information on:

- Welsh Risk Pool Learning Deadlines
- Personal Injury Claims (dated from October 2020)
- Claim Negligence Claims (dated from October 2020)
- Inquests (which we have not looked at within this audit)
- Redress

Potential risk of:

- Claims not being managed appropriately and in a consistent manner.; and
- Lessons are not learned as claims are not adequately captured.

It was noted, however, that the report's focus is limited to the volumes of clinical negligence and personal injury claims, and there was no graphical reporting of redress cases. We consider that this would be useful to demonstrate any trends noting that the additional time period permitted, during Covid, for the submission of learning has now ceased.

Also, whilst we recognise that the quarterly report to the Quality and Safety Committee has recently been developed, we identified a lack of monitoring of the ongoing claims caseload, including the status of each claim and the actions needed to progress in a timely manner and compliance with the various requirements highlighted within this report.

Recommendations

Priority

- 5.1 The health board should enhance the level of detail captured within claims reports, including the status of ongoing redress cases, claims and trends (also refer to MA4).
- 5.2 The health board should also capture the status of each claim on the caseload (acknowledging that these are managed by NWSSP Legal and Risk) on an ongoing basis and the actions needed to progress in compliance with requirements.

Medium

Management response

Target Date

Responsible Officer

5.1 Noted – please see response for 4.1 and 4.2

Complete and ongoing

Head of Legal Services, Risk and Patient Experience

5.2 The health board will request the Welsh Risk Pool to consider providing a report on the status of cases.

30 September 2023

Assistant Head of Legal Services

Appendix B: Audit Testing: Redress Cases

Redress Case Tested	Open/Closed Case?	Case raised within 12 months of occurrence? (Precedes Claims Team Involvement)	Responses to complainants within 30 days? (Precedes Claims Team Involvement)	Provision of advice within 5 working days of allocation?	Breach of duty admitted?	Authority to make a financial offer?	Completion of Final Response once qualifying liability determined.	Offer of redress within 12 months?
99	Closed	✓	Note 2	X	✓	✓	✓	✓
70	Closed	✓		Note 1	Note 1	✓	Note 1	Note 1
76	Open	✓		✓	✓	✓	✓	X
74	Closed	✓		✓	✓	✓	✓	✓
118	Open	✓		✓	✓	N/A: Ongoing	N/A: Ongoing	X
84	Closed	✓		✓	✓	✓	✓	X
62	Closed	✓		✓	✓	✓	✓	X
50	Closed	✓		✓	✓	✓	✓	✓
151	Closed	✓		✓	✓	N/A: no financial offer made	N/A	N/A
22	Closed	✓		✓	✓	✓	✓	✓

Note 1 This was a TAVI case initiated by a report from the Royal College of Cardiologists. Accordingly, a complaint had not originated from the claimant but as a result of the findings of that report. The qualifying liability was confirmed at the outset, therefore proceeding with the case in usual manner, for redress cases, was not required.

Note 2 This part of the process precedes the claims team’s involvement. However it would be useful to record these dates in stages within Datix for a complete record (see MA3.1).

Appendix C: Audit Testing: Clinical Negligence Claims

Claim ref.	Open or Closed claim	Admission of breach of duty?	Authority to make financial offer?	Authority to settle claim?	Appropriate action is taken for each claim in a timely manner		
					Claim opened within 3 years of occurrence?	Claim referred to NWSSP Legal & Risk within 8 weeks of being opened?	Learning from Events Report submitted within 60 days?
746	Open	✓	N/A: ongoing	N/A: ongoing	✓	✓	N/A: ongoing
404	Open	✓	N/A: ongoing	N/A: ongoing	✓	✓	✓: but note further information requested from panel
398	Closed	X Note 1	✓	✓	✓	✓	✓
685	Closed – case discontinued	N/A	N/A	N/A	✓	✓	N/A
843	Closed – liability not accepted	BOD not admitted	N/A	N/A	✓	✓	N/A

Note 1 Settlement offered with no admissions

Appendix D: Audit Testing: Personal Injury Claims

Personal Injury Claim Tested	Open or Closed Claim?	Admission of breach of duty?	Authority to make financial offer?	Authority to Settle Claim?	Claim opened within 3 years of occurrence?	Claim referred to NWSSP Legal and Risk within 8 weeks of being opened?	Learning from Events Report submitted within 60 days?
536	Closed	✓	✓	✓	✓	✓	✓
945	Closed	✓	✓	✓	✓	✓	✓
540	Open	✓	✓	✓	✓	✓	✓
949	Open	Note 1	✓	✓	✓	✓	✓
960	Closed	Note 1	✓	✓	✓	✓	✓

Note 1 Settlement offered with no admissions.

Appendix E: Assurance opinion and action plan risk rating

Audit Assurance Ratings

We define the following levels of assurance that governance, risk management and internal control within the area under review are suitable designed and applied effectively:

	<p>Substantial assurance</p>	<p>Few matters require attention and are compliance or advisory in nature. Low impact on residual risk exposure.</p>
	<p>Reasonable assurance</p>	<p>Some matters require management attention in control design or compliance. Low to moderate impact on residual risk exposure until resolved.</p>
	<p>Limited assurance</p>	<p>More significant matters require management attention. Moderate impact on residual risk exposure until resolved.</p>
	<p>No assurance</p>	<p>Action is required to address the whole control framework in this area. High impact on residual risk exposure until resolved.</p>
	<p>Assurance not applicable</p>	<p>Given to reviews and support provided to management which form part of the internal audit plan, to which the assurance definitions are not appropriate. These reviews are still relevant to the evidence base upon which the overall opinion is formed.</p>

Prioritisation of Recommendations

We categorise our recommendations according to their level of priority as follows:

Priority level	Explanation	Management action
<p>High</p>	<p>Poor system design OR widespread non-compliance. Significant risk to achievement of a system objective OR evidence present of material loss, error or misstatement.</p>	<p>Immediate*</p>
<p>Medium</p>	<p>Minor weakness in system design OR limited non-compliance. Some risk to achievement of a system objective.</p>	<p>Within one month*</p>
<p>Low</p>	<p>Potential to enhance system design to improve efficiency or effectiveness of controls. Generally issues of good practice for management consideration.</p>	<p>Within three months*</p>

* Unless a more appropriate timescale is identified/agreed at the assignment.



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